

FILED
 UNITED STATES DISTRICT COURT
 ALBUQUERQUE, NEW MEXICO

SEP 25 2019

MITCHELL R. ELPERS
 CLERK

* MAX ORTEGA III
 Full Name/Prisoner Number

#48360

* P.O. DRAWER 1328

LOS LUNAS, N.M. 87031
 Complete Mailing Address

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEW MEXICO**

Civil Action No. 19cv893 JB-SMV
 (To be supplied by the Court)

Max Ortega III #48360

, Plaintiff(s),

Full name(s) and prisoner number(s)
 (Do not use *et al.*)

v.

David Phaneos

Nolberto Dominguez
 (Do not use *et al.*)

, Defendant(s).

PRISONER'S CIVIL RIGHTS COMPLAINT

A. PARTIES AND JURISDICTION

1. Max Ortega III is a citizen of New Mexico who
 (Plaintiff) (State)

presently resides at * P.O. DRAWER 1328, LOS LUNAS, N.M. 87031
 (mailing address or place of confinement)

2. Defendant David Phaneos is a citizen of New Mexico
 (name of first defendant) (State)

whose address is unknown

and who is employed as C.I. Raton Police Dept. At the time the claim(s)
 (title and place of employment)

alleged in this complaint arose, was this defendant acting under color of state law?

☒ Yes ☐ No. If your answer is "Yes," briefly explain:

All Defendants relied upon New Mexico law
and Statute's as Police Officers.

Defendants

John Valdez

Cory Coca

Derrick Valdez

John Garcia

John/ Jane Doe(s) (7 thru 10)

3. Defendant Nolberto Dominguez is a citizen of New Mexico
(name of second defendant) (State)

whose address is Unknown

and who is employed as Officer Raton Police Dept. At the time the claim(s)
(title and place of employment)

alleged in this complaint arose, was this defendant acting under color of state law?
☒ Yes ☐ No. If your answer is "Yes," briefly explain:

(See Attached at 2-B)

(If more space is needed to furnish the above information for additional defendants, continue on a blank sheet which you should label "A. PARTIES." Be sure to include each defendant's complete address and title.)

(CHECK ONE OR BOTH:)

☒ Jurisdiction is asserted pursuant to 42 U.S.C. § 1983 (for state defendants) or *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) and 28 U.S.C. § 1331 (for federal defendants).

☐ Jurisdiction also is invoked pursuant to 28 U.S.C. § 1343(a)(3). (If you wish to assert jurisdiction under different or additional statutes, you may list them below.)

B. NATURE OF THE CASE

BRIEFLY state the background of your case.

(See Attached at 2-B)

C. CAUSE OF ACTION

I allege that the following of my constitutional rights, privileges, or immunities have been violated and that the following facts form the basis of my allegations: (If more space is needed to explain any allegation or to list additional supporting facts, continue on a blank sheet which you should label "D. CAUSE OF ACTION.")

Claim I: Illegal Search and Seizure in
violation of the 4th Amendment of the
U.S.C.

A. Parties

- 4.) Defendant John Valdez is a citizen of New Mexico whose address is unknown, and who is employed as an Officer of Raton Police Department.
- 5.) Defendant Cory Coca is a citizen of New Mexico whose address is unknown, and who is employed as an Officer of Raton Police Department.
- 6.) Defendant Derrick Valdez is a citizen of New Mexico whose address is unknown, and who is employed as an Officer of Raton Police Department.
- 7.) Defendant John Garcia is a citizen of New Mexico whose address is unknown, and who is employed as an Officer of Raton Police Department.
- 8.) Defendant(s) John and Sene Does 7 thru 10 are citizens of New Mexico whose address is unknown, and who is employed as Officer(s) or Agents of Raton

Police Department.

Defendant(s) John/ Jane Doe(s) are Fictitious person(s) whose identities are unknown to Plaintiff, but whose conduct may have caused or contributed to Plaintiff's damages herein. Plaintiff reserves the right to amend the pleadings with the names of said person(s) once their identities become known.

All Defendants were acting under the color of state law. Each Defendant was/is a Police Officer or Acting as an Agent of, Raton Police Department.

B. Nature of the Case,

Between the dates of March 24th 2018 and March 29, 2018 Defendants 2 thru 10 conducted an undercover law enforcement investigation against the Plaintiff. As part of

this investigation, Raton Police Department officers (Defendants 2 thru 10) utilized a Confidential Informant to conduct controlled drug buys from the Plaintiff in the Plaintiff's personal residence. The Confidential Informant, acting as an agent of the Raton Police Department entered the Plaintiff's private property and residential place of dwelling with both audio and video recording devices activated. At no time did the Plaintiff give consent or have any knowledge that the C.I. (acting as an agent) was audio and video recording the inside of Plaintiff's personal residence nor Plaintiff's conversations. The C.I. nor officers listed as defendants had no Search Warrant or valid Court order.

2-C

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Supporting Facts: (Include all facts you consider important, including names of persons involved, places, and dates. Describe exactly how each defendant is involved. State the facts clearly in your own words without citing legal authority or argument.)

(See Attached at 3-A thru 3-C)

Claim II: _____

Supporting Facts: _____

- 1.) On March 19, 2018 Defendant Dominguez met with Defendant Phaneof regarding Defendant Phaneof working in the capacity of a paid C.I. Defendant S. Valdez was present.
- 2.) On March 20, 2018 Defendant Dominguez and C.I. Defendant Phaneof signed a document agreement to allow Defendant Phaneof to act as an agent of the Raton Police Department in the form of a C.I. who will conduct controlled buys in exchange for payment.
- 3.) On March 24, 2018 Defendant Dominguez and C.I. Defendant Phaneof met at a predetermined location where Defendant Dominguez provided Defendant Phaneof \$100.00 cash to purchase drugs from the Plaintiff. On March 24, 2018 Defendants Coca, Dominguez, and D. Valdez put a "hidden button" camera on Defendant Phaneof and activated the audio/video recording. Defendants Dominguez, Coca, D. Valdez, and S. Valdez instructed Defendant Phaneof to enter Plaintiff's residence without a Search Warrant or probable cause to record the Plaintiff and other residence.
- 4.) On March 24, 2018 Defendant Phaneof entered Plaintiff's residence and recorded the Plaintiff with audio/video without the

Plaintiff's knowledge or consent to purchase drugs.

5.) On March 24, 2018 at 2004 hours Phaneof returned to meet with Defendants 2 thru 5 to provide the drugs and recordings.

Defendants 2 thru 5 paid Defendant Phaneof \$40.00 cash for acting as their agent.

6.) On March 25, 2018, March 27, 2018, and March 28, 2018, Defendants S. Valdez, D. Valdez, Dominguez, Coca, and C.L. Defendant Phaneof again agreed that Defendant Phaneof would act as a paid agent of the Raton Police Department and make controlled drug purchases from the Plaintiff, inside the Plaintiff's residence. Defendant Phaneof again was fitted with an audio/video recording device placed inside a jacket. Defendant Phaneof was directed by Defendants Dominguez, D. Valdez, S. Valdez, Coca, and Garcia to enter the Plaintiff's residence without Probable Cause or Search Warrant, to record the Plaintiff, both with audio and video. At no time did the Plaintiff consent to or authorize such recording of himself, nor his residence.

- 7.) On March 25, 2018 Defendants Dominguez, S. Valdez, D. Valdez, Coca, and Garcia provided Defendant Phaneof \$100.00 to purchase drugs. Defendant Phaneof was then compensated \$60.00 for acting as a Reton P.D. agent.
- 8.) On March 27, 2018 Defendants Dominguez, S. Valdez, D. Valdez, Coca, and Garcia provided Defendant Phaneof \$50.00 to purchase drugs. Defendant Phaneof was compensated \$80.00 for acting as an Agent of Reton P.D.
- 9.) On March 28, 2018 Defendants Dominguez, S. Valdez, D. Valdez, Coca, and Garcia provided Defendant Phaneof \$50.00 to purchase drugs. Defendant Phaneof was compensated \$50.00 for acting as an agent of Reton P.D.
- 10.) At no time during any of these 4 controlled buys did any of the Defendants have a Search Warrant or probable cause to send a paid "agent", acting under the control of the Reton P.D., into the Plaintiff's residence, which is a private dwelling that the Plaintiff has an expectation of privacy in. Defendant Phaneof unequivocally acted as an agent of Defendants 2 thru 10.

Claim III: _____

Supporting Facts:

D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to the conditions of your imprisonment? ____ Yes ☒ No. If your answer is "Yes," describe each lawsuit. (If there is more than one lawsuit, describe the additional lawsuits using this same format on a blank sheet which you should label "E. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF.")

a. Parties to previous lawsuit:

Plaintiff(s): _____

Defendant(s): _____

b. Name and location of court and docket number _____

c. Disposition of lawsuit. (For example, was the case dismissed? Was it appealed? Is it still pending?)

d. Issues raised: _____

e. Approximate date of filing lawsuit: _____

f. Approximate date of disposition: _____

2. I previously have sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part D. ____ Yes ☒ No.

If your answer is "Yes," briefly describe how relief was sought and the results.

3. I have exhausted available administrative remedies. ____ Yes ☒ No. If your answer is "Yes," briefly explain the steps taken. Attach proof of exhaustion. If your answer is "No," briefly explain why administrative remedies were not exhausted.

E. PREVIOUSLY DISMISSED ACTIONS OR APPEALS

1. If you are proceeding under 28 U.S.C. § 1915, please list each civil action or appeal you have brought in a court of the United States while you were incarcerated or detained in any facility that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Please describe each civil action or appeal. If there is more than one civil action or appeal, describe the additional civil actions or appeals using this same format on a blank sheet which you should label "F. PREVIOUSLY DISMISSED ACTIONS OR APPEALS."

a. Parties to previous lawsuit:

Plaintiff(s): _____

Defendant(s): _____

b. Name and location of court and docket number _____

c. Grounds for dismissal: () frivolous () malicious () failure to state a claim upon which relief may be granted.

d. Approximate date of filing lawsuit: _____

e. Approximate date of disposition: _____

2. Are you in imminent danger of serious physical injury? Yes ☒ No. If your answer is "Yes," please describe the facts in detail below without citing legal authority or argument.

G. REQUEST FOR RELIEF

I request the following relief:

(See Attached at 5-A)

G. Request For Relief

Wherefore, Plaintiff respectfully prays that this Court enter an Order:

- 11.) Issuing declaratory relief, declaring that the acts and omissions of the Defendants have violated Plaintiff's rights; and stating the defendants duties with respects to those rights;
- 12.) Award Plaintiff Compensatory damages in an amount permitted by law and to be deduced from the evidence at trial, against each Defendant, jointly and severally.
- 13.) A jury trial on all issues triable by jury.
- 14.) Plaintiff's costs in this suit.
- 15.) Any additional relief this Court deems just, proper, and equitable.

Verification

I have read the foregoing complaint and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true.

I certify under the penalty of perjury that the foregoing is true and correct.

Executed at: Los Lunas, NM

Date: September 10, 2019

By: Max Ortega III

Max Ortega III

Plaintiff

Prisoner's Original Signature

Original signature of attorney (if any)

Attorney's full address and telephone

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained in the complaint is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at Los Lunas, New Mexico on * SEPTEMBER 10, 2019
(location) (date)

* Max Ortega III
Prisoner's Original Signature

Max ORTEGA III #48360
C.N.M.E.F
P.O. DENVER 1328
LOS CUNAS, N.M.
87031

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SEP 25 2019

MITCHELL R. ELFERS
CLERK

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ALBUQUERQUE, New Mexico

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